

HOUSE BILL 575

Unofficial Copy  
E4

2003 Regular Session  
(3lr1192)

**ENROLLED BILL**  
*-- Judiciary/Judicial Proceedings --*

Introduced by **Delegates Anderson and Vallario**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Procedure - DNA ~~Evidence~~ - Postconviction Review and Felony**  
3 **Convictions**

4 FOR the purpose of expanding the definition of "law enforcement agency" to include  
5 certain additional agencies; clarifying the definition of "biological evidence";  
6 clarifying the definition of "scientific identification evidence"; clarifying under  
7 what circumstances a court may order DNA testing; requiring a court to make  
8 certain orders to certain law enforcement agencies when it orders DNA testing;  
9 authorizing a court to make certain orders regarding DNA testing when it  
10 orders DNA testing; requiring a court to hold certain hearings regarding the  
11 disposition of certain evidence under certain circumstances; authorizing appeals  
12 to be taken from certain court decisions made pursuant to ~~this section~~ certain  
13 provisions of law; requiring the collection of DNA samples from certain persons;  
14 identifying where DNA samples shall be collected; requiring the Director of the  
15 State Police Crime Laboratory to provide for liaison with certain criminal justice  
16 agencies relating to the State's participation in certain DNA data bases;  
17 providing for the admissibility of certain evidence; altering and repealing

1 ~~certain definitions; repealing a certain abrogation provision termination date;~~  
2 ~~and generally relating to postconviction reviews conducted by courts in the~~  
3 ~~matter of DNA testing.~~

4 BY repealing and reenacting, with amendments,  
5 Article - Criminal Procedure  
6 Section 8-201  
7 Annotated Code of Maryland  
8 (2001 Volume and 2002 Supplement)

9 BY repealing and reenacting, with amendments,  
10 Article - Public Safety  
11 Section 2-501, 2-502, 2-504, 2-505, and 2-510  
12 Annotated Code of Maryland  
13 (As enacted by Chapter \_\_\_\_\_ (S.B. 1) of the Acts of the General Assembly of  
14 2003)

15 BY repealing and reenacting, with amendments,  
16 Chapter 465 of the Acts of the General Assembly of 2002  
17 Section 5

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Criminal Procedure**

21 8-201.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) "DNA" means deoxyribonucleic acid.

24 (3) "LAW ENFORCEMENT AGENCY" MEANS ANY OF THE FOLLOWING:

25 (I) A MUNICIPAL OR COUNTY POLICE DEPARTMENT;

26 (II) SHERIFF'S OFFICE;

27 (III) THE MARYLAND STATE POLICE;

28 (IV) ANY PROSECUTING AUTHORITY;

29 (V) ANY STATE, UNIVERSITY, COUNTY, OR MUNICIPAL POLICE UNIT  
30 OR POLICE FORCE; AND

31 (VI) ANY HOSPITAL, MEDICAL FACILITY, OR PRIVATE ENTITY THAT  
32 IS CONDUCTING FORENSIC EXAMINATIONS AND SECURING BIOLOGICAL EVIDENCE  
33 RELATED TO CRIMINAL INVESTIGATIONS.

1 (4) "BIOLOGICAL EVIDENCE" INCLUDES, BUT IS NOT LIMITED TO, ANY  
2 BLOOD, HAIR, SALIVA, SEMEN, EPITHELIAL CELLS, BUCCAL CELLS, OR OTHER BODILY  
3 SUBSTANCES FROM WHICH GENETIC MARKER GROUPINGS MAY BE OBTAINED.

4 [(3)] (5) "Scientific identification evidence" means evidence that:

5 (i) is related to an investigation or prosecution that resulted in a  
6 judgment of conviction;

7 (ii) is in the actual or constructive possession of [the State under  
8 subsection (i) of this section] A LAW ENFORCEMENT AGENCY OR AGENT OF A LAW  
9 ENFORCEMENT AGENCY; and

10 (iii) contains BIOLOGICAL EVIDENCE FROM WHICH DNA MAY BE  
11 RECOVERED that may produce exculpatory or mitigating evidence relevant to a claim  
12 of a convicted person of wrongful conviction or sentencing if subject to DNA testing.

13 (b) Notwithstanding any other law governing postconviction relief, a person  
14 who is convicted of a violation of § 2-201, § 2-204, § 2-207, or §§ 3-303 through 3-307  
15 of the Criminal Law Article may file a petition for DNA testing of scientific  
16 identification evidence that the State possesses as provided in subsection (i) of this  
17 section and that is related to the judgment of conviction.

18 (c) Subject to subsection (d) of this section, a court shall order DNA testing if  
19 the court finds that:

20 (1) [(i) the scientific identification evidence was not previously  
21 subjected to the DNA testing that is requested for reasons beyond the control of the  
22 petitioner; or

23 (ii) the type of DNA test being requested is different from tests  
24 previously conducted and would have a reasonable likelihood of providing a more  
25 probative result than tests previously conducted;

26 (2) the scientific identification evidence was secured as provided in  
27 subsection (i) of this section, in relation to the crime for which the petitioner was  
28 convicted;

29 (3) the scientific identification evidence to be tested has been subject to a  
30 chain of custody as provided under subsection (i) of this section that is sufficient to  
31 establish that it has not been substituted, tampered with, replaced, or altered in any  
32 material aspect;

33 (4) identity was an issue in the trial that resulted in the petitioner's  
34 conviction;

35 (5) a reasonable probability exists that the DNA testing has the scientific  
36 potential to produce [results materially relevant to the petitioner's assertion of  
37 innocence] EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF  
38 WRONGFUL CONVICTION OR SENTENCING; and

1            [(6)]    (2)    the requested DNA test employs a method of testing generally  
2 accepted within the relevant scientific community.

3        (d)    (1)    A petitioner shall notify the State in writing of the filing of a petition  
4 under this section.

5            (2)    The State may file a response to the petition within 15 days after  
6 notice of the filing or within the time that the court orders.

7        (e)    If the court orders DNA testing under subsection (c) of this section, the  
8 court in its order [shall:

9            (1)    identify the specific scientific identification evidence to be tested;

10          (2)    identify the method of testing to be used; and

11          (3)    select the laboratory where the testing is to be performed from a  
12 listing of accredited laboratories to be maintained by the Office of the Attorney  
13 General.] MAY ISSUE ORDERS THE COURT CONSIDERS APPROPRIATE, INCLUDING  
14 DESIGNATION OF ANY OF THE FOLLOWING:

15          (1)    THE SPECIFIC EVIDENCE TO BE TESTED;

16          (2)    THE METHOD OF TESTING TO BE USED;

17          (3)    THE PRESERVATION OF SOME OF THE SAMPLE FOR REPLICATE  
18 TESTING AND ANALYSIS;

19          (4)    THE LABORATORY WHERE THE TESTING IS TO BE PERFORMED,  
20 PROVIDED THAT IF THE PARTIES CANNOT AGREE ON A LABORATORY, THE COURT  
21 MAY APPROVE TESTING AT ANY LABORATORY ACCREDITED BY THE AMERICAN  
22 SOCIETY OF CRIME LABORATORY DIRECTORS (ASCLAD), THE LABORATORY  
23 ACCREDITATION BOARD (LAB), OR THE NATIONAL FORENSIC SCIENCE TECHNOLOGY  
24 CENTER; AND

25          (5)    RELEASE OF BIOLOGICAL EVIDENCE BY A THIRD PARTY.

26        (f)    (1)    Except as provided in paragraph (2) of this subsection, DNA testing  
27 ordered under subsection (C) of this section shall be conducted as soon as practicable.

28          (2)    Based on a finding of necessity, the court may order the DNA testing  
29 to be completed by a date that the court provides.

30        (g)    (1)    Except as provided in paragraph (2) of this subsection, the petitioner  
31 shall pay the cost of DNA testing ordered under SUBSECTION (C) OF this section.

32          (2)    If the results of the DNA testing that the court orders under this  
33 section are favorable to the petitioner, the court shall order the State to pay the costs  
34 of the testing.

1 (h) (1) If the results of the postconviction DNA testing are unfavorable to the  
2 petitioner, the court shall dismiss the petition.

3 (2) If the results of the postconviction DNA testing are favorable to the  
4 petitioner, the court shall:

5 (i) if no postconviction proceeding has been previously initiated by  
6 the petitioner under § 7-102 of this article, open a postconviction proceeding under §  
7 7-102 of this article; or

8 (ii) if a postconviction proceeding has been previously initiated by  
9 the petitioner under § 7-102 of this article, reopen a postconviction proceeding under  
10 § 7-104 of this article.

11 (i) (1) The State shall preserve scientific identification evidence that:

12 (i) the State has reason to know contains DNA material; and

13 (ii) is secured in connection with an offense described in subsection  
14 (b) of this section.

15 (2) The State shall preserve scientific identification evidence described  
16 in paragraph (1) of this subsection for the time of the sentence, including any  
17 consecutive sentence imposed in connection with the offense.

18 (3) The State shall make the scientific identification evidence available  
19 to parties in the case under terms that are mutually agreed on between them.

20 (4) If an agreement cannot be reached, the party requesting the testing  
21 may file an application in the circuit court that entered the judgment for an order  
22 setting the terms under which the evidence will be made available for testing.

23 (j) (1) The State may dispose of scientific identification evidence before the  
24 expiration of the time period described in subsection (i) of this section if the State  
25 notifies the following persons:

26 (i) the person who is incarcerated in connection with the case;

27 (ii) any attorney of record for the person incarcerated; and

28 (iii) the Office of Public Defender for the judicial district in which  
29 the judgment of conviction was entered.

30 (2) The notification required in paragraph (1) of this subsection shall  
31 include:

32 (i) a description of the scientific identification evidence;

33 (ii) a statement that the State intends to dispose of the evidence;

1 (iii) a statement that the State will dispose of the evidence unless a  
2 party files an objection in writing within 120 days from the date of service in the  
3 circuit court that entered the judgment; and

4 (iv) the name and mailing address of the circuit court where an  
5 objection may be filed.

6 (3) Unless another law or court order requires the preservation of the  
7 scientific identification evidence, if no objection to the disposition of the evidence is  
8 filed within 120 days of the notice required under this subsection, the State may  
9 dispose of the evidence.

10 (4) If a person files written objections to the State's notice that it intends  
11 to dispose of scientific identification evidence, the court[:

12 (i) shall consider the reasons for and against disposition of the  
13 evidence;

14 (ii) may hold a hearing on the proposed disposition of the evidence;  
15 and

16 (iii) shall issue an order disposing of the matter as required by the  
17 interests of justice and the integrity of the criminal justice system.

18 (5) If a person objects to the disposition of the scientific identification  
19 evidence, the State shall have the burden of proving by a preponderance of the  
20 evidence that the evidence should be disposed] SHALL HOLD A HEARING ON THE  
21 PROPOSED DISPOSITION OF THE EVIDENCE AND AT THE CONCLUSION OF THE  
22 HEARING, IF THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE  
23 THAT:

24 (I) THE EVIDENCE HAS NO SIGNIFICANT VALUE FOR FORENSIC  
25 SCIENCE ANALYSIS, THE COURT MAY ORDER THE RETURN OF THE EVIDENCE TO ITS  
26 RIGHTFUL OWNER, THE DESTRUCTION OF THE EVIDENCE, OR OTHER DISPOSITION  
27 AS PROVIDED BY LAW; OR

28 (II) THE EVIDENCE IS OF SUCH SIZE, BULK, OR PHYSICAL  
29 CHARACTER THAT IT CANNOT PRACTICABLY BE RETAINED BY A LAW ENFORCEMENT  
30 AGENCY, ~~THE COURT MAY DIRECT THE RELEASE OR DESTRUCTION OF THE~~  
31 ~~EVIDENCE AFTER AFFORDING THE ADVERSE PARTY A REASONABLE OPPORTUNITY~~  
32 ~~TO OBTAIN REPRESENTATIVE SAMPLES OF ANY BIOLOGICAL EVIDENCE THAT CAN~~  
33 ~~BE OBTAINED FROM THE ITEM BY MEANS OF TAKING CUTTINGS OR SWABS, OR~~  
34 ~~OTHER MEANS OF OBTAINING REPRESENTATIVE SAMPLES ON A SHOWING OF NEED,~~  
35 THE COURT SHALL ORDER THAT THE EVIDENCE BE MADE AVAILABLE TO THE PARTY  
36 OBJECTING TO THE DISPOSITION OF THE EVIDENCE FOR THE PURPOSE OF  
37 OBTAINING REPRESENTATIVE SAMPLES FROM THE EVIDENCE IN THE FORM OF  
38 CUTTINGS, SWABS, OR OTHER MEANS, PRIOR TO THE RELEASE OR DESTRUCTION OF  
39 THE EVIDENCE;

1           (5)     IF THE COURT ORDERS THAT REPRESENTATIVE SAMPLES BE MADE  
2 AVAILABLE UNDER PARAGRAPH (4)(II) OF THIS SUBSECTION, THE COURT SHALL  
3 FURTHER ORDER THAT THE SAMPLES BE OBTAINED BY A QUALIFIED CRIME SCENE  
4 TECHNICIAN ACTING ON BEHALF OF THE PARTY SEEKING TO OBTAIN THE SAMPLES  
5 OR BY THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE EVIDENCE, WHICH  
6 ALSO SHALL PRESERVE AND STORE THE REPRESENTATIVE SAMPLES UNTIL THE  
7 REPRESENTATIVE SAMPLES ARE RELEASED TO THE CUSTODY OF A DNA TESTING  
8 FACILITY.

9           ~~(5)~~     (6)     AN APPEAL TO THE COURT OF APPEALS MAY BE TAKEN FROM  
10 AN ORDER ENTERED UNDER SUBSECTION (C), (H)(2), OR (J)(4) OF THIS SECTION.

11   **Article - Public Safety**

12 2-501.

13     (a)     In this subtitle the following words have the meanings indicated.

14     (b)     (1)     "CODIS" means the Federal Bureau of Investigation's "Combined  
15 DNA Index System" that allows the storage and exchange of DNA records submitted  
16 by FEDERAL, [state] STATE, and local forensic DNA laboratories.

17           (2)     "CODIS" INCLUDES THE NATIONAL DNA IDENTIFICATION INDEX  
18 ADMINISTERED AND OPERATED BY THE FEDERAL BUREAU OF INVESTIGATION.

19     (c)     "Crime Laboratory" means the Crime Laboratory Division of the  
20 Department.

21     [(d)]   "Crime of violence" means:

22           (1)     sexual abuse of a minor under § 3-602 of the Criminal Law Article;

23           (2)     rape in any degree;

24           (3)     a sexual offense in the first, second, or third degree;

25           (4)     murder;

26           (5)     robbery under § 3-402 or § 3-403 of the Criminal Law Article;

27           (6)     first degree assault; or

28           (7)     attempts to commit the offenses listed in items (1) through (6) of this  
29 subsection.]

30     [(e)]   (D)     "Director" means the Director of the Crime Laboratory or the  
31 Director's designee.

32     [(f)]   (E)     "DNA" means deoxyribonucleic acid.

1 [(g)] (F) (1) "DNA record" means DNA information stored in CODIS or the  
2 statewide DNA data base system.

3 (2) "DNA record" includes the information commonly referred to as a  
4 DNA profile.

5 [(h)] (G) "DNA sample" means a body fluid or tissue sample that is:

6 (1) provided by an individual [who is convicted of a crime of violence as  
7 defined in this section] WHO IS CONVICTED OF A FELONY OR A VIOLATION OF § 6-205  
8 OR § 6-206 OF THE CRIMINAL LAW ARTICLE; or

9 (2) submitted to the statewide DNA data base system for analysis as  
10 part of a criminal investigation.

11 [(i)] (H) "Statewide DNA data base system" means the DNA record system  
12 administered by the Department for identification purposes.

13 [(j)] (I) "Statewide DNA repository" means the State repository of DNA  
14 samples collected under this subtitle.

15 2-502.

16 (a) There is a statewide DNA data base system in the Crime Laboratory.

17 (b) The statewide DNA data base system is the central repository for all DNA  
18 testing information as provided in this subtitle.

19 (c) The Director shall:

20 (1) administer and manage the statewide DNA data base system;

21 (2) consult with the Secretary on the adoption of appropriate regulations  
22 for protocols and operations of the statewide DNA data base system;

23 (3) ensure compatibility with Federal Bureau of Investigation and  
24 CODIS requirements, including the use of comparable test procedures, quality  
25 assurance, laboratory equipment, and computer software; [and]

26 (4) ensure the security and confidentiality of all records in the statewide  
27 DNA data base system; AND

28 (5) PROVIDE FOR A LIAISON WITH THE FEDERAL BUREAU OF  
29 INVESTIGATION AND OTHER CRIMINAL JUSTICE AGENCIES RELATED TO THE STATE'S  
30 PARTICIPATION IN CODIS OR IN ANY DNA DATA BASE DESIGNATED BY THE  
31 DEPARTMENT.

32 (d) The Crime Laboratory shall:

33 (1) receive DNA samples for analysis, classification, [and] storage, AND  
34 DISPOSAL;



1           (2)     file the DNA record of identification characteristic profiles of DNA  
2 samples submitted to the Crime Laboratory; and

3           (3)     make information that relates to DNA samples and DNA records  
4 available to other agencies and individuals as authorized by this subtitle.

5       (e)     The Director may contract with a qualified DNA laboratory to complete  
6 DNA typing analyses if the laboratory meets the guidelines established by the  
7 Director.

8       (f)     Subject to § 2-511 of this subtitle, records of testing shall be permanently  
9 retained on file at the Crime Laboratory.

10 2-504.

11       (a)     (1)     In accordance with regulations adopted under this subtitle, AND IF  
12 ADEQUATE FUNDS FOR THE COLLECTION OF DNA SAMPLES ARE APPROPRIATED IN  
13 THE STATE BUDGET, an individual who is convicted of a [crime of violence, as defined  
14 in § 2-501 of this subtitle,] FELONY OR A VIOLATION OF § 6-205 OR § 6-206 OF THE  
15 CRIMINAL LAW ARTICLE shall:

16                   (i)     have a DNA sample collected on intake to a correctional facility,  
17 if the individual is sentenced to a term of imprisonment; or

18                   (ii)    provide a DNA sample as a condition of sentence or probation, if  
19 the individual is not sentenced to a term of imprisonment.

20       (2)     ~~AN~~ IF ADEQUATE FUNDS FOR THE COLLECTION OF DNA SAMPLES  
21 ARE APPROPRIATED IN THE STATE BUDGET, AN individual who was convicted of a  
22 [crime of violence, as defined in § 2-501 of this subtitle,] FELONY OR A VIOLATION  
23 OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE ON OR before October 1, [1999]  
24 2003, and who remains confined in a correctional facility [on or after October 1,  
25 1999], shall submit a DNA sample to the Department.

26       (b)     In accordance with regulations adopted under this subtitle, each DNA  
27 sample required to be collected under this section shall be collected:

28           (1)     at the correctional facility where the individual is confined, if the  
29 individual is confined in a correctional facility on or after October 1, [1999] 2003 or is  
30 sentenced to a term of imprisonment on or after October 1, [1999] 2003; or

31           (2)     at a facility specified by the Director, if the individual is ON  
32 PROBATION OR IS not sentenced to a term of imprisonment.

33       (c)     [Each DNA sample shall be collected by:

34           (1)     a correctional health nurse technician;

35           (2)     a physician;

36           (3)     a registered nurse;

1 (4) a licensed practical nurse;

2 (5) a laboratory technician; or

3 (6) a phlebotomist.] A DNA SAMPLE SHALL BE COLLECTED BY AN  
4 INDIVIDUAL WHO IS:

5 (1) APPOINTED BY THE DIRECTOR; AND

6 (2) TRAINED IN THE COLLECTION PROCEDURES THAT THE CRIME  
7 LABORATORY USES.

8 (d) A second DNA sample shall be taken IF NEEDED TO OBTAIN SUFFICIENT  
9 DNA FOR THE STATE DATA BASE OR if ordered by the court for good cause shown.

10 (e) Failure of an individual who is not sentenced to a term of imprisonment to  
11 provide a DNA sample within 90 days after notice by the Director is a violation of  
12 probation.

13 2-505.

14 (a) To the extent fiscal resources are available, DNA samples shall be  
15 COLLECTED AND tested:

16 (1) to analyze and type the genetic markers contained in or derived from  
17 the DNA samples;

18 (2) as part of an official investigation into a crime;

19 (3) to help identify human remains;

20 (4) to help identify missing individuals; and

21 (5) for research and administrative purposes, including:

22 (i) development of a population data base after personal  
23 identifying information is removed;

24 (ii) support of identification research and protocol development of  
25 forensic DNA analysis methods; and

26 (iii) quality control.

27 (b) (1) Only DNA records that directly relate to the identification of  
28 individuals shall be collected and stored.

29 (2) DNA records may not be used for any purposes other than those  
30 specified in this subtitle.

1 2-510.

2 A match obtained between an evidence sample and a data base entry may only  
3 be used as probable cause to obtain [a blood sample] AN ADDITIONAL DNA SAMPLE  
4 from the subject and is not admissible at trial unless confirmed by additional testing.

5

**Chapter 465 of the Acts of 2002**

6 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 4 of  
7 this Act, this Act shall take effect on October 1, 2002. [It shall remain effective for a  
8 period of 1 year and, at the end of September 30, 2003, with no further action required  
9 by the General Assembly, this Act shall be abrogated and of no further force and  
10 effect.]

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2003.